

OPEN MEETING ITEM



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OPEN MEETING ITEM

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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AZ CORP COMMISSION
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3 JEFF HATCH-MILLER
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4 WILLIAM A. MUNDELL
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5 MARC SPITZER
Commissioner
6 MIKE GLEASON
Commissioner
7 KRISTIN K. MAYES
Commissioner
8

Docket No. W-01303A-01-0983

9 IN THE MATTER OF THE APPLICATION
10 OF ARIZONA-AMERICAN WATER
11 COMPANY, INC. FOR A LIMITED
12 WAIVER OF THE REQUIREMENTS OF
13 A.A.C. R14-2-801, ET SEQ., AND CERTAIN
14 RELATED RELIEF.

Docket No. WS-01303A-02-0867

15 IN THE MATTER OF THE APPLICATION
16 OF ARIZONA-AMERICAN WATER
17 COMPANY, INC., AN ARIZONA
18 CORPORATION, FOR A
19 DETERMINATION OF THE CURRENT
20 FAIR VALUE OF ITS UTILITY PLANT
21 AND PROPERTY AND FOR INCREASES
22 IN ITS RATES AND CHARGES BASED
23 THEREON FOR UTILITY SERVICE BY ITS
24 SUN CITY WEST WATER AND
25 WASTEWATER DISTRICTS.

Docket No. WS-01303A-02-0868

26 IN THE MATTER OF THE APPLICATION
27 OF ARIZONA-AMERICAN WATER
28 COMPANY, INC., AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE CURRENT
FAIR VALUE OF ITS UTILITY PLANT
AND PROPERTY AND FOR INCREASES
IN ITS RATES AND CHARGES BASED
THEREON FOR UTILITY SERVICE BY ITS
MOHAVE WATER DISTRICT AND ITS
HAVASU WATER DISTRICT.

Docket No. W²01303A-02-0869

Arizona Corporation Commission

DOCKETED

JAN 21 2005

DOCKETED BY

NOTICE OF FILING PROPOSED ORDER

1 IN THE MATTER OF THE APPLICATION
2 OF ARIZONA-AMERICAN WATER
3 COMPANY, INC., AN ARIZONA
4 CORPORATION, FOR A
5 DETERMINATION OF THE CURRENT
6 FAIR VALUE OF ITS UTILITY PLANT
7 AND PROPERTY AND FOR INCREASES
8 IN ITS RATES AND CHARGES BASED
9 THEREON FOR UTILITY SERVICE BY ITS
10 MOHAVE WATER DISTRICT AND ITS
11 ANTHEM WATER DISTRICT, ITS AGUA
12 FRIA WATER DISTRICT, AND ITS
13 ANTHEM/AGUA FRIA WASTEWATER
14 DISTRICT.

Docket No. WS-01303A-02-0870

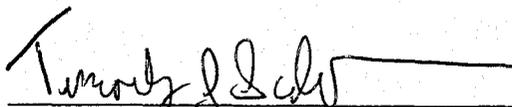
8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA-AMERICAN WATER
10 COMPANY, INC., AN ARIZONA
11 CORPORATION, FOR A
12 DETERMINATION OF THE CURRENT
13 FAIR VALUE OF ITS UTILITY PLANT
14 AND PROPERTY AND FOR INCREASES
15 IN ITS RATES AND CHARGES BASED
16 THEREON FOR UTILITY SERVICE BY ITS
17 TUBAC WATER DISTRICT.

Docket No. W-01303A-02-0908

NOTICE OF FILING PROPOSED ORDER

14 The Utilities Division ("Staff") of the Arizona Corporation Commission hereby provides
15 notice that Staff has filed the attached proposed order for the Commission's consideration. The
16 proposed order has tentatively been scheduled for the Commission's open meeting on February 8
17 and 9, 2005. For the reasons set forth in the text of the proposed order, Staff recommends that
18 the Commission approve the proposed order.

19 **RESPECTFULLY SUBMITTED** this 2/1 day of January 2005.

21
22 
23 Timothy J. Sabo
24 Attorney, Legal Division
25 Arizona Corporation Commission
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27 Phoenix, Arizona 85007
28 (602) 542-3402

1 The original and twenty-one (21) copies
2 of the foregoing were filed this 21st day
3 of January 2005 with:

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5 Copies of the foregoing were mailed
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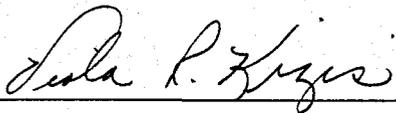
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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 JEFF HATCH-MILLER

Chairman

3 WILLIAM A. MUNDELL

Commissioner

4 MARC SPITZER

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5 MIKE GLEASON

Commissioner

6 KRISTIN K. MAYES

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8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA-AMERICAN WATER
10 COMPANY, INC. FOR A LIMITED
11 WAIVER OF THE REQUIREMENTS OF
12 A.A.C. R14-2-801, ET SEQ., AND CERTAIN
13 RELATED RELIEF.

Docket No. W-01303A-01-0983

14 IN THE MATTER OF THE APPLICATION
15 OF ARIZONA-AMERICAN WATER
16 COMPANY, INC., AN ARIZONA
17 CORPORATION, FOR A
18 DETERMINATION OF THE CURRENT
19 FAIR VALUE OF ITS UTILITY PLANT
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21 IN ITS RATES AND CHARGES BASED
22 THEREON FOR UTILITY SERVICE BY ITS
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24 WASTEWATER DISTRICTS.

Docket No. WS-01303A-02-0867

25 IN THE MATTER OF THE APPLICATION
26 OF ARIZONA-AMERICAN WATER
27 COMPANY, INC., AN ARIZONA
28 CORPORATION, FOR A
29 DETERMINATION OF THE CURRENT
30 FAIR VALUE OF ITS UTILITY PLANT
31 AND PROPERTY AND FOR INCREASES
32 IN ITS RATES AND CHARGES BASED
33 THEREON FOR UTILITY SERVICE BY ITS
34 SUN CITY WATER AND WASTEWATER
35 DISTRICTS.

Docket No. WS-01303A-02-0868

36 IN THE MATTER OF THE APPLICATION
37 OF ARIZONA-AMERICAN WATER
38 COMPANY, INC., AN ARIZONA
39 CORPORATION, FOR A
40 DETERMINATION OF THE CURRENT
41 FAIR VALUE OF ITS UTILITY PLANT
42 AND PROPERTY AND FOR INCREASES
43 IN ITS RATES AND CHARGES BASED
44 THEREON FOR UTILITY SERVICE BY ITS
45 MOHAVE WATER DISTRICT AND ITS
46 HAVASU WATER DISTRICT.

Docket No. W-01303A-02-0869

DECISION NO. _____

OPINION AND ORDER

1 IN THE MATTER OF THE APPLICATION
 2 OF ARIZONA-AMERICAN WATER
 3 COMPANY, INC., AN ARIZONA
 4 CORPORATION, FOR A
 5 DETERMINATION OF THE CURRENT
 6 FAIR VALUE OF ITS UTILITY PLANT
 7 AND PROPERTY AND FOR INCREASES
 8 IN ITS RATES AND CHARGES BASED
 9 THEREON FOR UTILITY SERVICE BY ITS
 10 MOHAVE WATER DISTRICT AND ITS
 11 ANTHEM WATER DISTRICT, ITS AGUA
 12 FRIA WATER DISTRICT, AND ITS
 13 ANTHEM/AGUA FRIA WASTEWATER
 14 DISTRICT.

Docket No. WS-01303A-02-0870

8 IN THE MATTER OF THE APPLICATION
 9 OF ARIZONA-AMERICAN WATER
 10 COMPANY, INC., AN ARIZONA
 11 CORPORATION, FOR A
 12 DETERMINATION OF THE CURRENT
 13 FAIR VALUE OF ITS UTILITY PLANT
 14 AND PROPERTY AND FOR INCREASES
 15 IN ITS RATES AND CHARGES BASED
 16 THEREON FOR UTILITY SERVICE BY ITS
 17 TUBAC WATER DISTRICT.

Docket No. W-01303A-02-0908

DECISION NO. _____
OPINION AND ORDER

14 Open Meeting:
 15 Phoenix, Arizona
 16 **BY THE COMMISSION:**

16 **I. Procedural History**

17 **A. RWE Case**

18 On December 17, 2001, Arizona-American Water Company (“Arizona-American” or
 19 “Company”) filed an application¹ with the Commission for an order (1) declaring that the
 20 Commission’s Affiliated Interests Rules (A.A.C. R14-2-801 et seq.) did not apply to the proposed
 21 acquisition of its parent company by RWE AG; (2) in the alternative, granting a waiver of the
 22 Affiliated Interests Rules for the acquisition; or (3) in the alternative, approving the acquisition
 23 under the Affiliated Interests Rules. After a hearing, the Commission adopted Decision No. 65453
 24 (“RWE Order”), which approved the proposed acquisition under the Affiliated Interests Rules with
 25 various conditions. Condition 15 of the RWE Order imposed a three-year rate moratorium on
 26 Arizona-American. The three-year moratorium began on the closing date of the acquisition, and
 27 concludes on January 10, 2006.

28 _____
¹ Docket No. W-01303A-01-0983 (the “RWE Case”).

1 Arizona-American filed a timely Application for Rehearing, which was denied by operation
2 of law. Arizona-American appealed the RWE Order to both the Arizona Court of Appeals and the
3 Superior Court. The Court of Appeals, in a published opinion, found that it did not have jurisdiction
4 to consider the appeal. *Arizona-American Water Co. v. Arizona Corporation Commission*, 437 Ariz.
5 Adv. Rep. 3, 98 P.3d 624 (App. 2004). Arizona-American's appeal in Superior Court is currently
6 set for oral argument on March 7, 2005.

7 **B. Rate Case.**

8 Before the moratorium period began, Arizona-American filed a rate case for most of its
9 systems in Arizona.² The Rate Case did not include Arizona-American's Paradise Valley Water
10 District. After a hearing, the Commission issued its rate case order as Decision No. 67093 ("Rate
11 Case Order") on June 30, 2004.

12 Arizona-American filed a timely Application for Rehearing, which was denied by operation
13 of law. Arizona-American then appealed the Rate Case Order to the Arizona Court of Appeals.

14 **C. Arsenic Motion.**

15 On December 15, 2004, Arizona-American filed a motion in the Commission's dockets for
16 the RWE Case and the Rate Case concerning Arsenic matters. Arizona-American states that it
17 estimates that it will have to spend over \$42 million dollars to comply with the Environmental
18 Protection Agency's ("EPA") new arsenic rules, which lowered the allowed amount of arsenic in
19 drinking water to 10 parts per billion from 50 parts per billion. Arizona-American estimates that it
20 will spend \$25 million to comply with the new EPA rules in its Agua Fria Water, Havasu Water,
21 Tubac Water, and Sun City West Water Districts. Arizona-American also estimates that it will
22 spend \$17 million to comply with the new EPA rules in its Paradise Valley Water District.

23 Arizona-American's motion makes two requests: (1) that the Commission re-open the
24 record in the Rate Case so as to consider modifying the Rate Case Order by adding an Arsenic Cost
25 Recovery Mechanism; and (2) that the Commission waive Condition 15 of the RWE Order solely
26 for the Paradise Valley Water District. Arizona-American states that it will dismiss its appeals of
27 the RWE Order and the Rate Case Order if its motion is granted.

28 _____
² Docket No. WS-01303A-02-0867, et al. (the "Rate Case").

1 **II. Discussion.**

2 As we have noted on many occasions, we are very concerned with the costs and difficulty of
3 compliance with the EPA's new Arsenic standard. We continue to urge all Arizona water
4 companies to take appropriate proactive measures to ensure compliance with this standard in a
5 timely and cost-effective manner. In two recent rate orders for Arizona Water Company, we
6 approved an "Arsenic Cost Recovery Mechanism" or "ACRM", which we have found to be an
7 appropriate mechanism to address arsenic compliance. (Decision Nos. 66400 and 66849). Here,
8 Arizona-American seeks approval to take steps towards granting an ACRM for certain of its
9 systems. Under the circumstances, we believe that it is appropriate to authorize these preliminary
10 steps. While we are concerned that Arizona-American did not bring this matter to our attention
11 sooner, we believe that taking these preliminary steps towards an ACRM for Arizona-American is
12 the best course of action at this time.

13 In particular, Arizona-American seeks authority to re-open the record in the Rate Case so as
14 to consider modifying the Rate Case Order by adding an ACRM. We do not lightly take such a
15 step, because we believe that the finality of our orders is important. Nevertheless, in light of the
16 urgency and the apparent magnitude of Arizona-American's arsenic problem, we believe that under
17 these circumstances re-opening the record in the Rate Case solely to consider the arsenic issue is
18 appropriate. Once an appropriate record is developed concerning the arsenic issues, we will
19 consider whether to modify the Rate Case Order using our authority under A.R.S. § 40-252.

20 Arizona-American also seeks a limited waiver of the rate case moratorium imposed by the
21 RWE Order. The rates currently in effect in Arizona-American's Paradise Valley Water District
22 were approved in Decision No. 61831 (July 20, 1999). We agree with Arizona-American that the
23 record in that rate case is too stale to be re-opened to address arsenic issues. Accordingly, we will
24 grant a limited waiver for the Paradise Valley Water District only of the rate case moratorium
25 imposed by the RWE Order.

26 **III. Findings of Fact.**

27 1. On December 17, 2001, Arizona-American Water Company ("Arizona-American" or
28

1 “Company”) filed an application³ with the Commission for an order (1) declaring that the
2 Commission’s Affiliated Interests Rules (A.A.C. R14-2-801 et seq.) did not apply to the proposed
3 acquisition of its parent company by RWE AG; (2) in the alternative, granting a waiver of the
4 Affiliated Interests Rules for the acquisition; or (3) in the alternative, approving the acquisition
5 under the Affiliated Interests Rules. After a hearing, the Commission adopted Decision No. 65453
6 (“RWE Order”), which approved the proposed acquisition under the Affiliated Interests Rules with
7 various conditions.

8 2. Condition 15 of the RWE Order imposed a three-year rate moratorium on Arizona-
9 American. The three-year moratorium began on the closing date of the acquisition, and concludes
10 on January 10, 2006.

11 3. Before the moratorium period began, Arizona-American filed a rate case for most of
12 its systems in Arizona.⁴ The Rate Case did not include Arizona-American’s Paradise Valley Water
13 District. After a hearing, the Commission issued its rate case order as Decision No. 67093 (“Rate
14 Case Order”).

15 4. On December 15, 2004, Arizona-American filed a motion in the RWE Case and the
16 Rate Case concerning Arsenic matters.

17 5. Arizona-American states that it estimates that it will have to spend over \$42 million
18 dollars to comply with the Environmental Protection Agency’s (“EPA”) new arsenic rules, which
19 lowered the allowed amount of arsenic in drinking water to 10 parts per billion from 50 parts per
20 billion. Arizona-American estimates that it will spend \$25 million to comply with the new EPA
21 rules in its Agua Fria Water, Havasu Water, Tubac Water, and Sun City West Water Districts.
22 Arizona-American also estimates that it will spend \$17 million to comply with the new EPA rules in
23 its Paradise Valley Water District.

24 6. Arizona-American’s motion makes two requests: (1) that the Commission re-open
25 the record in the Rate Case so as to consider modifying the Rate Case Order by adding an Arsenic
26 Cost Recovery Mechanism; and (2) that the Commission waive Condition 15 of the RWE Order
27

28 ³ Docket No. W-01303A-01-0983 (the “RWE Case”).

⁴ Docket No. WS-01303A-02-0867, et al. (the “Rate Case”).

1 solely for the Paradise Valley Water District.

2 7. Arizona-American states that it will dismiss its appeals of the RWE Order and the
3 Rate Case Order if its motion is granted.

4 8. Staff recommends that Arizona-American's motion be granted, conditioned on the
5 dismissal of the RWE Order and the Rate Case Order.

6 **IV. Conclusions of Law.**

7 1. Arizona-American is a public service corporation, as defined in Article XV, § 2 of
8 the Arizona Constitution.

9 2. The Commission has jurisdiction over the subject matter of the RWE Case and the
10 Rate Case and Arizona-American's motion dated December 17, 2004.

11 3. It is in the public interest, subject to the dismissal of Arizona-American's appeals of
12 the Rate Case Order and the RWE Order, to (1) re-open the record in the Rate Case so as to consider
13 modifying the Rate Case Order solely for adding an Arsenic Cost Recovery Mechanism; and (2)
14 waive Condition 15 of the RWE Order solely for the Paradise Valley Water District.

15 4. Under A.R.S. § 40-252, the Commission has authority to (1) re-open the record in the
16 Rate Case so as to consider modifying the Rate Case Order solely for adding an Arsenic Cost
17 Recovery Mechanism; and (2) waive Condition 15 of the RWE Order solely for the Paradise Valley
18 Water District.

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1 **V. Order**

2 IT IS THEREFORE ORDERED that Arizona-American's request to (1) re-open the record
3 in the Rate Case so as to consider modifying the Rate Case Order solely for adding an Arsenic Cost
4 Recovery Mechanism; and (2) waive Condition 15 of the RWE Order solely for the Paradise Valley
5 Water District is hereby granted.

6 IT IS FURTHER ORDERED that the approvals granted herein are expressly conditioned on
7 dismissal of Arizona-American's appeals of the Rate Case Order and the RWE Order.

8 IT IS FURTHER ORDERED that the approvals granted herein shall be automatically null
9 and void without further order of the Commission unless Arizona-American dismisses its appeals of
10 the Rate Case Order and the RWE Order within thirty days of the date of this order.

11 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

12 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

13
14
15 CHAIRMAN

COMMISSIONER

COMMISSIONER

16
17 COMMISSIONER

COMMISSIONER

18
19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
20 Executive Secretary of the Arizona Corporation
21 Commission, have hereunto, set my hand and caused the
22 official seal of this Commission to be affixed at the Capitol,
23 in the City of Phoenix, this _____ day of
24 _____ 2005.

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BRIAN C. McNEIL
Executive Secretary

DISSENT: _____

DISSENT: _____

1 SERVICE LIST FOR:
2 DOCKET NOS. W-01303A-01-0983, et al.

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